

**IN THE HIGH COURT OF SOUTH AFRICA
(FREE STATE DIVISION - BLOEMFONTEIN)**

CASE NO: 2703/2016

In the matter between:

TSOGA DEVELOPERS CC

Plaintiff

and

HANNES PEYPER INCORPORATED

HANNES PEYPER

MADALANE PEYPER

GRAHAM McPHERSON N.O.

THABO MOLEFE

ATTORNEYS' FIDELITY FUND

First Defendant

Second Defendant

Third Defendant

Fourth Defendant

Fifth Defendant

Sixth Defendant

PLEA

The first to third defendants (collectively "the defendants") plead as follows to the allegations made in the plaintiff's particulars of claim:

1.

AD SPECIAL PLEA: MISJOINDER

- 1.1. The plaintiff claims payment from the fifth defendant of an amount of R1 000 000.00 on the basis that the fifth defendant is the "third party" to whom payment of the amount aforesaid was made "on behalf of the Minister of Sport".
- 1.2. The Minister of Sport to whom reference is made to is Mr Fikile April Mbalula ("Mbalula").
- 1.3. Mbalula was in truth and in fact the recipient and beneficiary of the payment of the amount of R1 000 000.00, the amount having being paid to the fifth defendant as Mbalula's nominee.
- 1.4. Accordingly-
 - 1.4.1. The fifth defendant does not have a direct and substantial interest in the relief sought in these proceedings; and
 - 1.4.2. Mbalula should have been cited as a defendant in these proceedings.

WHEREFORE the defendants pray that the action be dismissed with costs, including the costs consequent upon the employment of senior counsel, alternatively, that the proceedings be stayed pending the joinder of Mbalula.

AD MERITS

2.

AD PARAGRAPH 1

2.1. Ad 1.1 to 1.4

This is admitted.

2.2. Ad 1.5

Save to admit the identity of the fourth defendant, the defendants bear no knowledge of the remainder of the allegations made herein and accordingly deny same.

2.3. Ad 1.6

Save to admit the identity of the fifth defendant, the defendants bear no knowledge of the remainder of the allegations made herein and accordingly deny same.

2.4. Ad 1.7

Save to deny that the sixth defendant has any legal interest in these proceedings, this is admitted.

3.**AD PARAGRAPH 2**

- 3.1. It is admitted that on 23 August 2012 and at Welkom, the plaintiff and the first defendant concluded an oral agreement of mandate ("the mandate").
- 3.2. The plaintiff was represented by Thamasaga Emmanuel Bozwana ("Bozwana") and the first defendant by the second defendant.
- 3.3. At all material times, until the date of his demise, Bozwana was the directing mind of the plaintiff.
- 3.4. Save as aforesaid, this is denied.

4.

AD PARAGRAPH 3

4.1. Ad 3.1

This is admitted.

4.2. Ad 3.2

This is admitted.

4.3. Ad 3.3

This is denied

4.4. Ad 3.4

4.4.1. It is admitted that the second defendant would procure that the first defendant fulfilled its obligations under the mandate.

4.4.2. Save as aforesaid, this is denied.

4.5. Ad 3.5

This is admitted

5.

AD PARAGRAPH 4

This is admitted.

6.

AD PARAGRAPH 5

This is admitted.

7.

AD PARAGRAPH 6

This is admitted.

8.

AD PARAGRAPH 7

This is admitted.

9.

AD PARAGRAPH 8

9.1. The amounts that were paid were as follows:

9.1.1. To the first defendant, R17 385 197.90

9.1.2. To or on behalf of Bozwana, R23 751 641.00

9.1.3. To Mbalula, R1 000 000.00.

9.2. Save as aforesaid, this is admitted.

10.

AD PARAGRAPH 9

Subject to 1 and 9 above, this is admitted.

11.

AD PARAGRAPH 10

This is noted.

12.

AD PARAGRAPH 11

12.1. This is denied.

12.2. Furthermore, and in any event, the allegations made herein (and in the preceding paragraph) do not disclose a cause of action.

13.

AD PARAGRAPH 12

13.1. This is denied.

13.2. Furthermore, and in any event, the allegations made herein do not disclose a cause of action.

14.

AD PARAGRAPH 13

This is admitted.

15.

AD PARAGRAPH 14

15.1. This is noted.

15.2. It is denied that the defendants are indebted to the plaintiff whether in the amount claimed or at all.

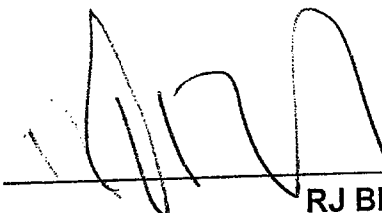
15.3. Furthermore, and in any event, the allegations made in the particulars of claim do not disclose a cause of action

WHEREFORE the defendants pray that the action be dismissed with costs, including the costs consequent upon the employment of senior counsel.

Dated at Sandton on 8 August 2016.


KW LÜDERITZ SC

COUNSEL FOR FIRST TO THIRD DEFENDANTS


RJ BRITZ

ATTORNEY FOR FIRST TO THIRD DEFENDANTS
HONEY ATTORNEYS
HONEY CHAMBERS
NORTHRIDGE MALL
KENNETH KAUNDA DRIVE
BLOEMFONTEIN

TO: THE REGISTRAR OF THE COURT
BLOEMFONTEIN

AND TO: GARRATT HUGO & DE SOUZA INC
C/O SYMINGTON & DE KOK ATTORNEYS
ATTORNEYS FOR PLAINTIFF
169B NELSON MANDELA DRIVE
BLOEMFONTEIN
REF: L STRATING/KH0642

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